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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

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10 Attorneys for Defendant  
11 BIC USA, INC.

12 UNITED STATES DISTRICT COURT

13 SOUTHERN DISTRICT OF CALIFORNIA

07 CV 2367 IEG BLM

14 DONNA R. NELSON, an individual and  
15 on behalf of the general public,

16 Plaintiff,

17 vs.

18 BIC USA, INC., a Delaware corporation,  
19 and DOES 1 through 100, inclusive,

20 Defendants.

CASE NO.:

Originally filed in the Superior Court  
for the State of California, County of  
San Diego, Case No. 37-2007-  
00081566-CU-BT-CTL

21 NOTICE OF REMOVAL

22 Pursuant to provisions of 28 U.S.C. §§ 1453(a), 1446, and 1332(d),  
23 defendant BIC USA, INC. ("BIC"), files this Notice of Removal of this case from  
24 the California Superior Court for the County of San Diego to the United States  
25 District Court for the Southern District of California. In support of this Notice of  
26 Removal, BIC states the following:  
27  
28

CR

## INTRODUCTION

1  
2           1.     This matter consists of a putative class-action brought by  
3 plaintiff, Donna R. Nelson, on behalf of California residents who purchased BIC's  
4 disposable lighters with the product or packaging label "Made in USA." BIC is the  
5 singular defendant in this action. Plaintiff's Complaint acknowledges that BIC is a  
6 Delaware corporation whose principal place of business is located in Milford,  
7 Connecticut. Plaintiff's Complaint alleges three causes of action against BIC for:  
8 1) Violation of California Civil Code section 1750, *et seq.* ("Consumer Legal  
9 Remedies Act"); 2) Violation of California Business and Professions Code section  
10 17200, *et seq.* ("Unfair Competition"); and 3) Violation of California Business and  
11 Professions Code section 17533.7. The Complaint alleges that the amount in  
12 controversy does not exceed \$4,999,000 as to all class members, but Plaintiff's  
13 calculation of said amount is specious and does not include the valuation of all of  
14 the restitutionary measures or continuing damages sought. Given the breadth of  
15 the purported class, as well as amount in controversy by virtue of the plaintiff's  
16 Complaint, removal to District Court is now appropriate.

## REMOVAL PROCEDURES

17  
18           2.     On May 14, 2007, a previous action titled *Kevin T. Levine vs.*  
19 *BIC USA, Inc. and Does 1 through 100, inclusive* was filed in the Superior Court  
20 for the State of California in and for the County of San Diego, Case No. 37-2007-  
21 00066691-CU-BT-CTL ("Levine Action") by the same attorneys seeking the same  
22 relief.

23           3.     On May 17, 2007, BIC's authorized California agent for service  
24 of process was served with the Summons and Complaint in the Levine Action.

25           4.     On November 2, 2007, plaintiff in the Levine Action filed a  
26 voluntary dismissal of his complaint while BIC's motion to dismiss was under  
27 submission with the District Court.  
28

1           5.     On November 13, 2007, the instant action titled, *Donna R.*  
2 *Nelson v. BIC USA, Inc., et al.* was filed in the Superior Court for the State of  
3 California in and for the County of San Diego, Case No. 37-2007-00081566-CU-  
4 BT-CTL ("Nelson Action").

5           6.     On November 19, 2007, BIC's authorized California agent for  
6 service of process was served with the Summons and Complaint in the Nelson  
7 Action.

8           7.     Pursuant to 28 U.S.C. §1446(b), a complete copy of all process,  
9 pleadings, and orders served upon BIC in the Nelson Action is attached hereto as  
10 Exhibit "A."

11           8.     Under 28 U.S.C. §1446(b), the notice of removal of a civil  
12 action "shall be filed within thirty days after the receipt by the defendant, through  
13 service or otherwise, of a copy of the initial pleading..." Thus, this notice of  
14 removal is timely filed under 28 U.S.C. §1446(b).

15           9.     Venue is proper pursuant to 28 U.S.C. § 1391 because this  
16 action was pending in the San Diego County Superior Court.

17                   **STANDARD FOR REMOVAL**

18                   **UNDER THE CLASS ACTION FAIRNESS ACT (CAFA)**

19           10.    This lawsuit is an action of which this Court has original  
20 jurisdiction under 28 U.S.C. § 1332(d) and is one that may be removed to this  
21 Court under 28 U.S.C. §§ 1441, 1446 and 1453. Under the Class Action Fairness  
22 Act and pursuant to 28 U.S.C. § 1453(b), class action suits that do not arise under  
23 federal law are removable if the combined claims of the class members exceed \$5  
24 million; there are at least 100 class members; and any class member is a citizen of  
25 a different state than any defendant. 28 USC § § 1332(d)(2), 1332(d)(5) 1453(a).

**DIVERSITY OF CITIZENSHIP****EXISTS BETWEEN THE PARTIES**

11. Plaintiff, and all other potential class members, are citizens of the State of California. "Plaintiff is an individual residing in San Diego, California." Complaint ¶ 4. "Plaintiff brings this action on behalf of herself as an individual and on behalf of all other persons similarly situated in the State of California who purchased Defendants' products." Complaint ¶ 20.

12. BIC is, and at all relevant times herein was, a corporation duly formed under the laws of Delaware with its principal place of business in Milford, Connecticut. Complaint ¶ 5. For purposes of diversity of citizenship, a corporation is deemed to be a citizen of both the state of its incorporation and of the state where it has its principal place of business. 28 U.S.C. § 1332(c)(1). Thus, pursuant to 28 U.S.C. § 1332(c)(1), BIC is a citizen of Delaware and Connecticut.

**AMOUNT IN CONTROVERSY**

13. As apparent in the Nelson Action complaint, Plaintiff *attempted* to intentionally plead around CAFA to remain in state court. In particular, Plaintiff pled that the amount in controversy does not exceed \$4,999,000. *See* Complaint, ¶ 24. Plaintiff states, "Under no scenario, is the total amount of damages that Plaintiff seeks in this action in excess of \$4,999,000." *Id.* However, her damages calculation is specious. While Plaintiff *attempted* to plead an amount in controversy less than the jurisdictional amount, she contradicted herself more than once by, *inter alia*, requesting *damages* in the amount of \$4,999,000, but failing to include in her damages calculation her further request for various restitutionary measures and compensation, which would surely bring the amount pled in excess of the jurisdictional limit. An award of damages measures the injury sustained by a plaintiff as a result of the defendant's acts, but an order requiring the disgorgement of profits, however, does not measure the extent of injury to the

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1 plaintiff, but rather the extent of gain by the defendant. *Bank of the West v.*  
2 *Superior Court*, 2 Cal. 4th 1254 (1992). A disgorgement of profits does not equate  
3 with damages. *Id.*

4 14. In addition to damages, Plaintiff also seeks numerous  
5 restitutionary measures, all of which must be valued and added to the claimed  
6 amount of \$4,999,000. For example, not included in her damages calculation is  
7 her request for disgorgement of all ill-gotten monies and other relief. *See* Prayer  
8 for Relief, ¶¶ 5, 9. Also, Plaintiff seeks a permanent injunction (*see* Prayer for  
9 Relief, ¶ 4), “restitution to compensate, and to restore all persons in interest,  
10 including all Class Members, with ill-gotten monies...” (*see* Prayer for Relief, ¶ 5),  
11 and “such other and further relief as this Court finds just, equitable and proper,  
12 including, but not limited to, the remedy of disgorgement” (*see* Prayer for Relief,  
13 ¶ 9). To the extent that Plaintiff’s claims for a permanent injunction and attorneys’  
14 fees are alleged to have been included in the \$4,999,000 figure (*see* Complaint,  
15 ¶ 24), her additional claims for return of all “ill-gotten monies” and other relief  
16 find no such support. In addition, Plaintiff claims that “Defendant continues to  
17 engage in illegal conduct,” (Complaint, ¶ 44) and that consumers are being  
18 victimized “each and every day,” (Complaint, ¶ 15) which weighs in favor of  
19 removal. *See, e.g., Hardy v. Corina*, 2000 U.S. Dist. LEXIS 7940 at \*3 (holding  
20 that the number of claims, the nature of those claims, and the allegations that  
21 plaintiff continued to suffer damages into the future all weighed in favor of  
22 removal).

23 15. Where the specific amount of damages sought is not alleged in  
24 the Complaint, Defendants must prove by a preponderance of the evidence that the  
25 amount in controversy prong is satisfied. *See Lowdermilk v. U.S. Bank National*  
26 *Ass’n* (9<sup>th</sup> Cir. 2007) 479 F.3d 994, 998 (“because Plaintiff failed to specify her  
27 damages, Defendant must prove only by a preponderance of the evidence that the  
28 damages claimed exceed \$ 5,000,000”). When it is “facially apparent” from a

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1 complaint that the amount pled is less than the jurisdictional amount, a defendant  
2 must prove to a "legal certainty" that the amount in controversy exceeds the  
3 jurisdictional amount. *Id.* In this case, while Plaintiff *attempted* to plead an  
4 amount in controversy less than the jurisdictional amount, as stated above, she  
5 contradicted herself more than once by, *inter alia*, requesting *damages* in the  
6 amount of \$4,999,000, but failing to include her further prayer for various  
7 restitutionary measures and compensation, which would surely bring the amount  
8 pled in excess of the jurisdictional limit. In addition, Plaintiff states that the  
9 alleged amount in controversy includes attorneys' fees and costs and injunctive  
10 relief, but fails to include her claim for other restitutionary measures including  
11 disgorgement of all ill-gotten monies and other relief. See Prayer for Relief, ¶ ¶ 5,  
12 9. For these reasons, BIC contends that the "preponderance of the evidence"  
13 standard described in *Lowdermilk* applies because it is not "facially apparent" that  
14 the alleged amount in controversy has been pled, but even under the "legal  
15 certainty" standard, BIC believes the amount in controversy prong has been  
16 demonstrated.

17 16. Demonstrating that the amount in controversy exceeds a certain  
18 sum can be done by setting forth the facts in controversy by way of affidavit,  
19 *Luckett v. Delta Airlines, Inc.* (5th Cir. 1999) 171 F.3d 295, 298, as well as by  
20 introducing evidence of jury verdicts in cases involving similar facts. *McCaa v.*  
21 *Mass. Mut. Life Ins. Co.* (D. Nev. 2004) 330 F. Supp. 2d 1143, 1149; *Gaus v.*  
22 *Miles, Inc.* (9<sup>th</sup> Cir. 1992) 980 F.2d 564. As provided in the attached declaration of  
23 Steve Milkey, Senior Director of Sales for BIC, Plaintiff's claim for restitution of  
24 all monies *alone* paid to BIC exceeds \$5 million.<sup>1</sup> See Declaration of Steve Milkey  
25 ("Milkey Declaration"), ¶ 4. When damages and attorneys' fees are added to that  
26 amount, the claimed recovery far exceeds the threshold amount. See *Gibson v.*

27  
28 <sup>1</sup> The figures identified by Mr. Milkey relate to Plaintiff's claims for restitution and therefore, the amount is *in addition to* the Plaintiff's claims for damages of \$4,999,000.



1 *Chrysler Corp.* (9<sup>th</sup> Cir. 2001) 261 F.3d 927, 942-43 (explaining that attorney's  
2 fees can be aggregated with other damages for purpose of determining amount in  
3 controversy). Accordingly, the amount in controversy requirement for removal has  
4 been met.

#### 5 NUMBER OF CLASS MEMBERS

6 17. As evidenced by the Milkey Declaration, the number of  
7 potential class members exceeds 100 by a considerable sum. According to sales  
8 data for the four-year period preceding the filing of this action, from November 14,  
9 2003 through November 13, 2007, BIC sold more than 50 million J-26 (i.e.  
10 "Maxi") lighters in the State of California. See Milkey Declaration, ¶ 4. Given the  
11 number of sales of the subject lighters, the number of consumers similarly situated  
12 as the plaintiff would easily exceed 100 over the relevant period. Plaintiff likely  
13 does not dispute this fact. The evidence provides that it is beyond controversy that  
14 the number of putative class members exceeds 100.

#### 15 CONCLUSION

16 18. Pursuant to 28 U.S.C. § 1446 (d), a copy of this Notice of  
17 Removal is being filed with the clerk of the Superior Court of California, County  
18 of San Diego.

19 19. Pursuant to 28 U.S.C. § 1446 (d), BIC is providing written  
20 notice to Plaintiff.

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1 WHEREFORE, BIC, hereby removes the action now pending against it in  
2 the Superior Court of the State of California, County of San Diego, to this  
3 Honorable Court, and requests that this Court retain jurisdiction for all further  
4 proceedings.

5 Dated: December 17, 2007

GORDON & REES LLP

6  
7 By: 

Craig J. Mariam  
Kevin Alexander  
Benjamin T. Morton  
Manuel Saldana  
Attorneys for Defendant, BIC  
USA, INC.

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San Diego, CA 92101





CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>JOHN H. DONBOLI (SBN: 205218)</b> <b>JL SEAN SLATTERY (SBN: 210965)</b> <b>DEL MAR LAW GROUP, LLP</b> <b>322 Eighth Street, Suite 101, Del Mar, CA 92014</b> TELEPHONE NO.: 858-793-6244 FAX NO.: 858-793-6005 ATTORNEY FOR (Name): <b>Donna R. Nelson</b>		FOR COURT USE ONLY  FILED CIVIL JUSTICE OFFICE 5 001 NOV 13 A 9:04 CLERK-SUPERIOR COURT SAN DIEGO COUNTY, CA
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>San Diego</b> STREET ADDRESS: <b>330 W. Broadway</b> MAILING ADDRESS: <b>330 W. Broadway</b> CITY AND ZIP CODE: <b>San Diego 92101</b> BRANCH NAME: <b>Central</b>		
CASE NAME: <b>DONNA R. NELSON v. BIC USA, INC.</b>		
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)		CASE NUMBER: <b>37-2007-00081566-CU-BT-CTL</b>
<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		JUDGE:  DEPT:

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation</b> (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Type of remedies sought (check all that apply):
- |   |  |                                      |
|---|--|--------------------------------------|
| a. <input checked="" type="checkbox"/> monetary | b. <input checked="" type="checkbox"/> nonmonetary; declaratory or injunctive relief | c. <input type="checkbox"/> punitive |
|---|--|--------------------------------------|
4. Number of causes of action (specify): **Three**
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **November 13, 2007**

John H. Donboli, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 685-6146	
PLAINTIFF(S) / PETITIONER(S): Donna R. Nelson	
DEFENDANT(S) / RESPONDENT(S): Bic USA, Inc.	
NELSON VS. BIC USA, INC.	
<b>NOTICE OF CASE ASSIGNMENT</b>	CASE NUMBER: 37-2007-00081566-CU-BT-CTL

Judge: Jeffrey B. Barton

Department: C-69

COMPLAINT/PETITION FILED: 11/13/2007

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL  
REQUIREMENTS LISTED BELOW:**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT).

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil consists of all cases except: Small claims appeals, petitions, and unlawful detainers.

**COMPLAINTS:** Complaints must be served on all named defendants, and a CERTIFICATE OF SERVICE (SDSC CIV-345) filed within 60 days of filing. This is a mandatory document and may not be substituted by the filing of any other document.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than a 15 day extension which must be in writing and filed with the Court.)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service.

THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO LITIGATION, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. MEDIATION SERVICES ARE AVAILABLE UNDER THE DISPUTE RESOLUTION PROGRAMS ACT AND OTHER PROVIDERS. SEE ADR INFORMATION PACKET AND STIPULATION.

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION PURSUANT TO CCP 1141.10 AT THE CASE MANAGEMENT CONFERENCE. THE FEE FOR THESE SERVICES WILL BE PAID BY THE COURT IF ALL PARTIES HAVE APPEARED IN THE CASE AND THE COURT ORDERS THE CASE TO ARBITRATION PURSUANT TO CCP 1141.10. THE CASE MANAGEMENT CONFERENCE WILL BE CANCELLED IF YOU FILE FORM SDSC CIV-359 PRIOR TO THAT HEARING

**3) SETTLEMENT CONFERENCES:** The goal of a settlement conference is to assist the parties in their efforts to negotiate a settlement of all or part of the dispute. Parties may, at any time, request a settlement conference before the judge assigned to their case; request another assigned judge or a pro tem to act as settlement officer; or may privately utilize the services of a retired judge. The court may also order a case to a mandatory settlement conference prior to trial before the court's assigned Settlement Conference judge.

**4) OTHER VOLUNTARY ADR:** Parties may voluntarily stipulate to private ADR options outside the court system including private binding arbitration, private early neutral evaluation or private judging at any time by completing the "Stipulation to Alternative Dispute Resolution Process" which is included in this ADR package. Parties may also utilize mediation services offered by programs that are partially funded by the county's Dispute Resolution Programs Act. These services are available at no cost or on a sliding scale based on need. For a list of approved DRPA providers, please contact the County's DRPA program office at (619) 238-2400.

**ADDITIONAL ADR INFORMATION:** For more information about the Civil Mediation Program, please contact the Civil Mediation Department at (619) 515-8908. For more information about the Judicial Arbitration Program, please contact the Arbitration Office at (619) 531-3818. For more information about Settlement Conferences, please contact the Independent Calendar department to which your case is assigned. Please note that staff can only discuss ADR options and cannot give legal advice.

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	<b>FOR COURT USE ONLY</b>
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
PLAINTIFF(S): Donna R. Nelson	
DEFENDANT(S): BIC USA, Inc.	
SHORT TITLE: NELSON VS. BIC USA, INC.	
<b>STIPULATION TO ALTERNATIVE DISPUTE RESOLUTION PROCESS (CRC 3.221)</b>	CASE NUMBER: 37-2007-00081566-CU-BT-CTL

Judge: Jeffrey B. Barton

Department: C-69

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution process. Selection of any of these options will not delay any case management time-lines.

- |   |   |
|---|---|
| <input type="checkbox"/> Court-Referred Mediation Program                   | <input type="checkbox"/> Court-Ordered Nonbinding Arbitration           |
| <input type="checkbox"/> Private Neutral Evaluation                         | <input type="checkbox"/> Court-Ordered Binding Arbitration (Stipulated) |
| <input type="checkbox"/> Private Mini-Trial                                 | <input type="checkbox"/> Private Reference to General Referee           |
| <input type="checkbox"/> Private Summary Jury Trial                         | <input type="checkbox"/> Private Reference to Judge                     |
| <input type="checkbox"/> Private Settlement Conference with Private Neutral | <input type="checkbox"/> Private Binding Arbitration                    |
| <input type="checkbox"/> Other (specify): _____                             |   |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Alternate: (mediation & arbitration only) \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name of Plaintiff

Name of Defendant

Signature

Signature

Name of Plaintiff's Attorney

Name of Defendant's Attorney

Signature

Signature

(Attach another sheet if additional names are necessary). It is the duty of the parties to notify the court of any settlement pursuant to California Rules of Court, 3.1385. Upon notification of the settlement the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court and all un-served, non-appearing or actions by names parties are dismissed.

**IT IS SO ORDERED.**

Dated: 11/13/2007

JUDGE OF THE SUPERIOR COURT

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CASE NUMBER: 37-2007-00081566-CU-BT-CTL

CASE TITLE: Nelson vs. BIC USA, Inc.

**NOTICE TO LITIGANTS/ADR INFORMATION PACKAGE**

You are required to serve a copy of this Notice to Litigants/ADR Information Package and a copy of the blank Stipulation to Alternative Dispute Resolution Process (received from the Civil Business Office at the time of filing) with a copy of the Summons and Complaint on all defendants in accordance with San Diego Superior Court Rule 2.1.5, Division II and CRC Rule 201.9.

**ADR POLICY**

It is the policy of the San Diego Superior Court to strongly support the use of Alternative Dispute Resolution ("ADR") in all general civil cases. The court has long recognized the value of early case management intervention and the use of alternative dispute resolution options for amenable and eligible cases. The use of ADR will be discussed at all Case Management Conferences. It is the court's expectation that litigants will utilize some form of ADR or the court's mediation or arbitration programs or other available private ADR options as a mechanism for case settlement before trial.

**ADR OPTIONS**

**1) CIVIL MEDIATION PROGRAM:** The San Diego Superior Court Civil Mediation Program is designed to assist parties with the early resolution of their dispute. All general civil independent calendar cases, including construction defect, complex and eminent domain cases are eligible to participate in the program. Limited civil collection cases are not eligible at this time. San Diego Superior Court Local Rule 2.31, Division II addresses this program specifically. Mediation is a non-binding process in which a trained mediator 1) facilitates communication between disputants; and 2) assists parties in reaching a mutually acceptable resolution of all or part of their dispute. In this process, the mediator carefully explores not only the relevant evidence and law, but also the parties' underlying interests, needs and priorities. The mediator is not the decision-maker and will not resolve the dispute – the parties do. Mediation is a flexible, informal and confidential process that is less stressful than a formalized trial. It can also save time and money, allow for greater client participation and allow for more flexibility in creating a resolution.

**Assignment to Mediation, Cost and Timelines:** Parties may stipulate to mediation at any time up to the CMC or may stipulate to mediation at the CMC. Mediator fees and expenses are split equally by the parties, unless otherwise agreed. Mediators on the court's approved panel have agreed to the court's payment schedule for county-referred mediation's fee of \$150.00 per hour for each of the first two hours and their individual rate per hour thereafter. Parties may select any court-approved mediator, however, the court maintains a panel of court-approved mediators who have satisfied panel requirements and who must adhere to ethical standards. All court-approved mediator fees and other policies are listed in the Mediator Directory at each court location to assist parties with selection. **Discovery:** Parties do not need to conduct full discovery in the case before mediation is considered, utilized or referred. **Attendance at Mediation:** Trial counsel, parties and all persons with full authority to settle the case must personally attend the mediation, unless excused by the court for good cause.

**2) JUDICIAL ARBITRATION:** Judicial Arbitration is a binding or non-binding process where an arbitrator applies the law to the facts of the case and issues an award. The goal of judicial arbitration is to provide parties with an adjudication that is earlier, faster, less formal and less expensive than trial. The arbitrator's award may either become the judgment in the case if all parties accept or if no trial de novo is requested within the required time. Either party may reject the award and request a trial de novo before the assigned judge if the arbitration was non-binding. If a trial de novo is requested, the trial will usually be scheduled within a year of the filing date.

**Assignment to Arbitration, Cost and Timelines:** Parties may stipulate to binding or non-binding judicial arbitration or the judge may order the matter to arbitration at the case management conference, held approximately 150 days after filing, if a case is valued at under \$50,000 and is "at issue". The court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. In addition, if parties select an arbitrator from the court's panel, the court will pay the arbitrator's fees. Superior Court

FILED ON DEMAND

1 JOHN H. DONBOLI (SBN: 205218)  
2 JL SEAN SLATTERY (SBN: 210965)  
3 DEL MAR LAW GROUP, LLP  
322 8<sup>th</sup> Street, Suite 101  
4 Del Mar, CA 92014  
Telephone: (858) 793-6244  
Facsimile: (858) 793-6005

CIVIL FILED  
CIVIL BUSINESS OFFICE 9  
CENTRAL DIVISION

2007 NOV 14 P 2:58

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

5 Attorneys for Plaintiff: DONNA R. NELSON, an individual and on behalf  
6 of all others similarly situated

7  
8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO  
9

10 DONNA R. NELSON, an individual and on  
11 behalf of the general public,

12 Plaintiff,

13 vs.

14 BIC USA, Inc., a Delaware Corporation, and  
DOES 1 through 100, inclusive,

15 Defendants.  
16  
17  
18  
19  
20  
21  
22

CASE NO. 37-2007-00081566-CU-BT-CTL

CLASS ACTION

AFFIDAVIT OF VENUE

23  
24 I, John H. Donboli, declare as follows:

25 1. I am an attorney licensed to practice before all courts of the State of California  
26 and a partner with the law firm of Del Mar Law Group, LLP, attorneys of record for Plaintiff  
27 Donna Nelson. I have personal knowledge of all matters set forth herein and could competently  
28



1 testify thereto if called to do so at the time of any hearing or trial in this case, except as to those  
2 matters averred on information and belief, which I believe to be true. This affidavit is provided  
3 in support of Plaintiff's statutory requirements pursuant to California Civil Code § 1780(c).

4 2. The transactions that form the basis of this action or a substantial portion thereof  
5 occurred in San Diego County.

6 3. The Complaint filed by Plaintiff contains a cause of action for violation of the  
7 Consumers Legal Remedies Act as against defendants.

8 4. As per the foregoing assertions, this cause of action has been properly  
9 commenced in the proper county or judicial district for trial.

10 I declare under penalty of perjury under the laws of California, that the foregoing is true  
11 and correct and that this declaration was executed on November 13, 2007, at Del Mar,  
12 California.

13  
14   
15 \_\_\_\_\_  
16 John H. Donboli  
17  
18  
19  
20  
21  
22  
23  
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26  
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**SUMMONS**  
(CITACION JUDICIAL)

SUM-100

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

BIC USA, Inc., a Delaware Corporation, and DOES 1 through 100, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DONNA R. NELSON, an individual and on behalf of the general public,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
CIVIL BUSINESS OFFICE 5  
CENTRAL DIVISION

2007 NOV 13 A 9:03

CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una Carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la Corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is  
(El nombre y dirección de la corte es):

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

- ☐ HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101-3827
- ☐ NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081-6643
- ☐ EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020-3941
- ☐ RAMONA BRANCH 1428 MONTECITO RD., RAMONA CA 92065-5200
- ☐ SOUTH COUNTY DIVISION, 800 3RD AVE., CHULA VISTA, CA 91910-6848
- ☐ JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123-2792

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

JOHN H. DONBOLI (SBN: 205218)

858-793-6244

DEL MAR LAW GROUP, LLP

322 Eighth Street, Suite 101

Del Mar, CA 92014

DATE: November 13, 2007

(Fecha)

NOV 13 2007

CLERK OF THE SUPERIOR COURT

C. VAN PELT

Clerk, by  
(Secretario)

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010))

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):  
under ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)  
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)  
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)  
☐ other (specify):
4. ☐ by personal delivery on (date):

FILED  
CIVIL RIGHTS DIVISION

2007 NOV 13 A 9:04

CLERK-SUPERIOR COURT  
SAN DIEGO, CALIF.

1 JOHN H. DONBOLI (SBN: 205218)  
2 JL SEAN SLATTERY (SBN: 210965)  
3 DEL MAR LAW GROUP, LLP  
322 8<sup>th</sup> Street, Suite 101  
4 Del Mar, CA 92014  
Telephone: (858) 793-6244  
Facsimile: (858) 793-6005

5 Attorneys for Plaintiff: DONNA R. NELSON, an individual and on behalf  
6 of all others similarly situated

8 SUPERIOR COURT OF CALIFORNIA - COUNTY OF SAN DIEGO

10 DONNA R. NELSON, an individual and on  
11 behalf of the general public,

12 Plaintiff,

13 vs.

14 BIC USA, Inc., a Delaware Corporation, and  
DOES 1 through 100, inclusive,

15 Defendants.

CASE NO. 37-2007-00081566-CU-BT-CTL

CLASS ACTION

COMPLAINT FOR:

- (1) VIOLATION OF CONSUMERS  
LEGAL REMEDIES ACT (CIVIL  
CODE SECTION 1750 ET SEQ.);  
AND
- (2) VIOLATION OF BUSINESS &  
PROFESSIONS CODE SECTIONS  
17200 ET SEQ. (CALIFORNIA  
UNFAIR COMPETITION LAW)
- (3) VIOLATION OF BUSINESS &  
PROFESSIONS CODE SECTION  
17533.7 (FALSE "MADE IN USA"  
CLAIM).

DEMAND FOR JURY TRIAL

24 COMES NOW, plaintiff DONNA R. NELSON ("Plaintiff"), as an individual and on  
25 behalf of the general public and all others similarly situated, by her undersigned attorneys,  
26 alleges as follows:

27 ///

28

1 NATURE OF THE CASE

2 1. This is a class action case brought on behalf of all purchasers of disposable lighter  
3 products manufactured, distributed, marketed, and/or sold by BIC USA, INC. ("BIC"). Through  
4 a fraudulent, unlawful, deceptive and unfair course of conduct, BIC, and DOES 1 through 100  
5 (collectively "Defendant"), manufactured, marketed, and/or sold a variety of disposable lighters  
6 to the California general public with the false designation and representation that BIC's  
7 disposable lighters were "MADE IN USA." The "MADE IN USA" claim is printed on the  
8 product and the products' packaging typically includes prominent pictures of the U.S.A flag.  
9 Despite true facts to the contrary, the BIC disposable lighter is substantially made, manufactured  
10 or produced from component parts that are manufactured outside of the United States in violation  
11 of California law.

12 JURISDICTION AND VENUE

13 2. This Court has jurisdiction over this matter in that Defendants routinely transact  
14 business in San Diego County.

15 3. Venue in this Court is proper pursuant to Code of Civil Procedure Section 395  
16 and 395.5, Business & Professions Code §§ 17203, 17204, and Civil Code § 1780(c) because  
17 Defendant does business in San Diego County and Plaintiff's transactions took place within the  
18 County.

19 PARTIES

20 4. Plaintiff is an individual residing in San Diego, California.

21 5. Defendant BIC is a corporation that is organized and exists under the laws of the  
22 State of Delaware. BIC's principal place of business is located at 500 BIC Drive, Milford, CT  
23 06460. BIC may be served with process in this matter by serving its California registered agent  
24 for service of process, CT Corporation, 818 West Seventh Street, Los Angeles, CA 90017.

25 6. BIC is a leading manufacturer and distributor of disposable lighters in the United  
26 States and the number one worldwide manufacturer of branded lighters. BIC maintains the  
27 following website: www.bicworld.com.

28

1           7.     Plaintiff is ignorant of the true names and capacities of the defendants sued  
2 herein as DOES 1-100, inclusive; therefore, Plaintiff sues these defendants by such fictitious  
3 names. Plaintiff is informed and believes that each of the fictitious named defendants are legally  
4 responsible in some manner for the occurrences herein alleged, assisted in and about the wrongs  
5 complained herein by providing financial support, advice, resources or other assistance. Plaintiff  
6 will amend the complaint to allege their true names and capacities when ascertained.

7           8.     Plaintiff is informed and believes that all defendants were agents, servants and  
8 employees of their co-defendants, and in doing the things hereinafter mentioned, were acting  
9 within the scope of their authority as such agents, servants and employees with the permission  
10 and consent of their co-defendants.

11                   **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

12           9.     Plaintiff incorporates herein each and every allegation contained in paragraphs 1  
13 through 8, inclusive, as though fully set forth herein.

14           10.    Defendant manufactures and markets disposable lighters that have printed on the  
15 product itself and the product packaging that the BIC disposable lighter is "MADE IN USA."

16           11.    Defendant also routinely places prominent images of the U.S.A. flag on the  
17 packaging of the BIC lighters to falsely signify that its products are "MADE IN USA."

18           12.    Despite true facts to the contrary, the BIC disposable lighter is substantially  
19 made, manufactured or produced with component parts that are manufactured outside of the  
20 United States. The foreign component parts that constitute the BIC disposable lighter includes,  
21 but is not limited to the: (a) Flint Spring; (b) Fork Spring; (c) Fuel Tank Metal Ball; (d) Base; (e)  
22 Hood; (f) Spring Wheel; (g) Spark Wheel; (h) Valve; and (i) Jet; which, on information and  
23 belief is made in France, China, Spain, and/or Brazil.

24           13.    Defendant markets, and continues to market, and represent to the general public  
25 that the BIC disposable lighter is "MADE IN USA." In addition, Defendant fraudulently  
26 concealed the material facts at issue herein by failing to disclose to the general public the true  
27 facts regarding the country of origin designation appearing on the BIC disposable lighter and  
28

1 packaging. The disclosure of this information was necessary in order to make Defendant's  
2 representation not misleading for want of disclosure of these omitted facts. Defendant possesses  
3 superior knowledge of the true facts which were not disclosed, thereby tolling the running of any  
4 applicable statute of limitations.

5 14. Consumers and users of these products are particularly vulnerable to these  
6 deceptive and fraudulent practices. Most consumers possess very limited knowledge of the  
7 likelihood that products, including the component parts therein, claimed to be made in the United  
8 States are in fact made in foreign countries. This is a material factor in many individuals'  
9 purchasing decisions, as they believe they are supporting American companies and American  
10 jobs.

11 15. Some consumers believe that "MADE IN USA" products are higher quality than  
12 their foreign-manufactured counterparts. Due to Defendant's scheme to defraud the market,  
13 members of the general public were fraudulently induced to purchase Defendant's products at  
14 premium prices. During the relevant time period, BIC charged excess monies for its lighter  
15 products, in comparison to its disposable lighter competitors, based on the false "MADE IN  
16 USA" designation that was intended to deceive the California consumer. California laws are  
17 designed to protect consumers from this type of false representation and predatory conduct.  
18 Defendant's scheme to defraud consumers is ongoing and will victimize consumers each and  
19 every day until altered by judicial intervention.

20 16. On information and belief, Defendant employs approximately 100 union  
21 employees, who are members of United Steelworkers of America (Local 134), to currently  
22 manufacture the BIC disposable lighters at issue in this case. BIC could potentially be  
23 employing 100 additional union employees to manufacture its disposable lighters if it elected to  
24 produce all of the disposable lighter component parts, which BIC currently procures from outside  
25 the United States, in its Connecticut manufacturing facility. BIC's actions relating to obtaining  
26 the disposable lighter component parts from outside of the United States prevents hundreds of  
27 additional United Steelworkers of America (Local 134) from having jobs at the BIC plant in  
28



1 Connecticut.

2 **THE PLAINTIFF TRANSACTIONS**

3 17. On several occasions during the relevant statutory time period, Plaintiff  
4 purchased many BIC disposable lighters in San Diego, California. In each case, the product  
5 itself was marked with "MADE IN USA." In each case, the BIC disposable lighter unlawfully  
6 contained component parts made outside of the United States and BIC was not entitled to  
7 lawfully make a "MADE IN USA" representation.

8 18. In each case when Plaintiff, and Class Members, purchased a BIC disposable  
9 lighter, they relied upon Defendant's "MADE IN USA" representation in their purchasing  
10 decision, which is typical of most California consumers, and they were deceived as a result of  
11 Defendant's actions. These purchasing decisions were supported by the prominent U.S.A.  
12 representations made by Defendant, which is absent from most of Defendant's disposable lighter  
13 competitors. Plaintiff believed at the time she purchased BIC disposable lighters that she was in  
14 fact supporting U.S. jobs and the U.S. economy.

15 19. In each case, Plaintiff suffered an "actual injury" because Plaintiff's money was  
16 taken by Defendant as a result of Defendant's false "MADE IN USA" claims set forth on the  
17 BIC disposable lighters. As such, Plaintiff and Class Members were injured as a result of  
18 Defendant's false "MADE IN USA" representations that are at issue in this litigation.

19 **CLASS ALLEGATIONS**

20 20. Plaintiff brings this action on behalf of herself as an individual and on behalf of  
21 all other persons similarly situated in the State of California who purchased Defendant's  
22 products. Specifically, excluded from the class is any persons who have a controlling interest in  
23 BIC, any of BIC's parent companies, subsidiaries, and BIC's officers, directors, managers,  
24 shareholders and members of their immediate families; and their heirs, successors and assigns  
25 (the "Class") pursuant to Code of Civil Procedure § 382 and Business & Professions Code §  
26 17200 *et seq.* The class also does not include any persons who previously filed suit against BIC  
27 for similar violations of California law.

28



1           21.     The members of the Class are so numerous that joinder of all members is  
2 impracticable. The disposition of their claims in a class action will provide substantial benefits  
3 to the parties and the Court. On information and belief, the exact number and identities of the  
4 members of the Class are readily ascertainable from the records in Defendant's possession.

5           22.     There is a well-defined community of interest in the questions of law and fact  
6 involved in this case.

7           23.     All causes of action herein have been brought and may properly be maintained as  
8 a class action pursuant to the provisions of Code of Civil Procedure section 382 because there is  
9 a well-defined community of interest in the litigation and the proposed class is easily  
10 ascertainable:

11               a.     Numerosity: On information and belief, the Class is so numerous that the  
12 individual joinder of all members would be impracticable.

13               b.     Common Questions Predominate: Common questions of law and fact  
14 exist as to all members of the Class, and those questions clearly predominate over any questions  
15 that might affect members individually. These common questions of law and fact include, for  
16 example, whether Defendants violated Section 17533.7 of the California Business & Professions  
17 Code by misrepresenting the national origin of its disposable lighter products because the  
18 component parts of these products are manufactured outside the United States and whether  
19 Defendant's actions in this regard constitute an unfair, unlawful, or fraudulent business practice  
20 pursuant to Section 17200 et seq. of the California Business & Professions Code.

21               c.     Typicality: On information and belief, plaintiff's claims are typical of the  
22 claims of the members of the Class. Plaintiff and all members of the Class sustained damages  
23 arising out of Defendant's common course of conduct complained herein.

24               d.     Adequacy: Plaintiff will fairly and adequately protect the interest of the  
25 members of the Class because Plaintiff has no interests which are adverse to the interests of  
26 absent class members and because Plaintiff has retained counsel who possesses significant  
27 litigation experience regarding alleged violations of consumer statutes.

28

1 e. Superiority: A class action is superior to other available means for the fair  
2 and efficient adjudication of this controversy since individual joinder of all members would be  
3 impracticable. Class action treatment will permit a large number of similarly situated persons to  
4 prosecute their common claims in a single forum simultaneously, efficiently and without the  
5 unnecessary duplication of effort and expense that numerous individual actions would engender.  
6 Furthermore, since most class members' individual claims for damages are likely to be modest,  
7 the expenses and burdens of litigating individual actions would make it difficult or impossible  
8 for individual members of the Class to redress the wrongs done to them. An important public  
9 interest will be served by addressing the matter as a class action, substantial economies to the  
10 litigants and to the judicial system will be realized and the potential for inconsistent or  
11 contradictory judgments will be avoided.

12 24. The amount in controversy as to Plaintiff (individually) or any other individual  
13 Class Member does not exceed \$10.00 and the amount in controversy as to all Class Members,  
14 inclusive of attorneys' fees and costs, and injunctive relief (to the extent it can be valued) does  
15 not exceed \$4,999,000. Under no scenario, is the total amount of damages that Plaintiff seeks in  
16 this action in excess of \$4,999,000. Accordingly, no federal court has "original jurisdiction"  
17 over this claim pursuant to, *inter alia*, the Class Action Fairness Act of 2005 ("CAFA"), codified  
18 in relevant part at 28 U.S.C. §§ 1332(d) and 1453(b), which provides that federal courts have  
19 "original jurisdiction" only where there is diversity of citizenship, the action is between citizens  
20 of different states, and the amount in controversy exceed \$5,000,000, exclusive of fees and  
21 costs. 28 U.S.C. § 1332(d).

22 a. Federal courts are courts of limited jurisdiction, which strictly construe their  
23 own jurisdiction. *Lowdermilk v. U.S. Bank National Ass'n* (2007) 479 F.3d  
24 994, 998. It is well established that the plaintiff is the "master of her  
25 complaint" and can "plead to avoid federal jurisdiction" *Id.* at 998-99. Thus,  
26 when the damages sought by plaintiff appear from the four corners of the  
27 complaint to be less than the jurisdictional amount, as in this case, the  
28

1 defendant seeking removal must not only contradict the plaintiff's own  
2 assessment of damages, but must overcome the presumption against federal  
3 jurisdiction by showing plaintiff is "legally certain" to recover at least five  
4 million dollars. *Id.* at 999. In fact, a plaintiff may sue for less than the  
5 amount she may be entitled to if she wishes to avoid federal jurisdiction and  
6 remain in state court subject only to a "good faith" requirement in pleading,  
7 which is inherent in every filing. *See St. Paul Mercury Indem. Co. v. Red Cab*  
8 *Co.* (1938) 303 U.S. 283, 288-89.

9 25. Plaintiff and Class Members do not seek Defendant's overall profits or gross  
10 revenues from the sale of the disposable lighters that are at issue in this litigation because it is not  
11 the proper measure of damages in this case.

12 26. On information and belief, the average price of the BIC disposable lighter at  
13 issue in this litigation is \$1.39 and the average wholesale price of the BIC disposable lighter at  
14 issue in this litigation is \$0.93 [less 33% of the retail price]. Assuming, *arguendo*, that  
15 Defendant sold 60 million disposable lighters with the false "MADE IN USA" designation to  
16 California consumers during the past four years at the average wholesale price of \$0.93, then the  
17 gross proceeds from such sales would be \$55.8 million dollars. The seminal case on this issue,  
18 *Colgan v. Leatherman Tool Group, Inc.*, Cal.App.4<sup>th</sup> 663,696 (2<sup>nd</sup> Dist. 2006), rejected a  
19 calculation of restitution at 25 percent of the average wholesale unit price per tool. Again,  
20 assuming, *arguendo*, that 5 percent would be the more appropriate restitution calculation in this  
21 case, the restitution amount would be limited to \$2.79 million dollars in this litigation. This  
22 hypothetical calculation is demonstrative of the inherent difficulty that BIC will have in  
23 presenting to a legal certainty that its damages exceed \$5 million dollars in this case (to the  
24 extent BIC seeks to remove this action to federal court). *See Lowdermilk*, 479 F.3d at 999.

#### 25 FIRST CAUSE OF ACTION

26 (Violation of Consumers Legal Remedies Act As Against All Defendants)

27 27. Plaintiff realleges and incorporates herein by reference all of the allegations  
28

1 contained in Paragraphs 1 through 26, inclusive, of this complaint as though fully set forth herein.

2 28. California Civil Code Section 1750 *et seq.* (entitled the Consumers Legal  
3 Remedies Act) provides a list of "unfair or deceptive" practices in a "transaction" relating to the  
4 sale of "goods" or "services" to a "consumer." The Legislature's intent in promulgating The  
5 Consumers Legal Remedies Act is expressed in Civil Code Section 1760, which provides, *inter*  
6 *alia*, that its terms are to be:

7 [C]onstrued liberally and applied to promote its underlying  
8 purposes, which are to protect consumers against unfair and  
9 deceptive business practices and to provide efficient and  
10 economical procedures to secure such protection.

11 29. Defendant's products constituted "goods" as defined in Civil Code Section  
12 1761(a).

13 30. Plaintiff, and Class members, are each a "Consumer" as defined in Civil Code  
14 Section 1761(d).

15 31. Each of Plaintiff's purchases of Defendant's products constituted a "transaction"  
16 as defined in Civil Code Section 1761(e).

17 32. Civil Code Section 1770(a)(4) and (9) provides that "[t]he following unfair  
18 methods of competition and unfair or deceptive acts or practices undertaken by any person in a  
19 transaction intended to result or which results in the sale or lease of goods or services to any  
20 consumer are unlawful: Using deceptive representations or designations of geographic origin in  
21 connection with goods or services....Advertising good or services with intent not to sell them as  
22 marketed."

23 33. Defendant violated Civil Code Section 1770(a)(4) and (9) by marketing and  
24 representing that its products are "MADE IN USA" when they actually contain component parts  
25 that are manufactured outside of the United States.

26 34. It is alleged on information and belief that Defendant's violations of the  
27 Consumer's Legal Remedies Act set forth herein were done with awareness of the fact that the  
28

1 conduct alleged was wrongful and were motivated solely for increased profit. It is also alleged  
 2 on information and belief that Defendant did these acts knowing the harm that would result to  
 3 Plaintiff and that Defendant did these acts notwithstanding that knowledge.

4 35. At this time, Plaintiff is not seeking damages under Civil Code § 1780. Thus,  
 5 pursuant to Civil Code § 1780(d),<sup>1</sup> Plaintiff is not required *per se* to give a 30-day notice prior to  
 6 filing this Complaint. Plaintiff reserves her right to give such notice and to amend this  
 7 Complaint at a later time to assert a claim for monetary damages Civil Code § 1780.

8 36. As a direct and proximate result of Defendant's violations of the Consumers  
 9 Legal Remedies Act, Plaintiff and Class members are entitled to: (a) a declaration that  
 10 Defendants violated the Consumers Legal Remedies Act, and (b) an injunction preventing  
 11 Defendant's unlawful actions. Plaintiff and Class Members suffered an "actual injury" because  
 12 Plaintiff and Class Members' money was taken by Defendant as a result of Defendant's false  
 13 "MADE IN USA" claims set forth on the BIC disposable lighters.

#### 14 SECOND CAUSE OF ACTION

15 (Violation of Business & Prof. Code Section 17200 *Et Seq.* As Against All Defendants)

16 37. Plaintiff realleges and incorporates herein by reference all of the allegations  
 17 contained in Paragraphs 1 through 36, inclusive, of this complaint as though fully set forth herein.

18 38. Business & Professions Code section 17200 *et seq.* provides that unfair  
 19 competition means and includes "any unlawful, unfair or fraudulent business act or practice and  
 20 unfair, deceptive, untrue or misleading marketing."

21 39. By and through their conduct, including the conduct detailed above, Defendant  
 22 engaged in activities which constitute unlawful, unfair, and fraudulent business practices  
 23 prohibited by Business & Professions Code Section 17200 *et seq.* Beginning at an exact date

24  
 25 <sup>1</sup> Section 1780(d) states: "An action for injunctive relief brought under the specific provisions  
 26 of Section 1770 may be commenced without compliance with subdivision (a). Not less than 30  
 27 days after the commencement of an action for injunctive relief, and after compliance with  
 28 subdivision (a), the consumer may amend his or her complaint without leave of court to include a  
 request for damages. The appropriate provisions of subdivision (b) or (c) shall be applicable if  
 the complaint for injunctive relief is amended to request damages."

1 unknown as yet and continuing up through the present Defendant committed acts of unfair  
 2 competition, including those described above, by engaging in a pattern of "unlawful" business  
 3 practices, within the meaning of Business & Professions Code Section 17200 *et seq.*, by  
 4 manufacturing, distributing, marketing products with a false country of origin designation and  
 5 violating Section 17533.7 by falsely claiming that the products referenced herein are "MADE IN  
 6 USA" that are made with component parts manufactured outside of the United States.

7       a. In addition, beginning at an exact date unknown as yet and continuing up  
 8 through the present Defendant committed additional acts of unfair  
 9 competition, including those described above, by engaging in a pattern of  
 10 "unlawful" business practices, within the meaning of Business & Professions  
 11 Code Section 17200 *et seq.*, by misrepresenting the BIC disposable lighter  
 12 country of origin as "MADE IN USA," so third-party distributors that sell  
 13 Defendant's disposable lighters to the federal government could unwittingly  
 14 sell "foreign made" products in violation of the provisions of the Buy  
 15 American Act. See 41 USC §§ 10a-10d.

16       40. Beginning at an exact date unknown as yet and continuing up through the present,  
 17 Defendant committed acts of unfair competition that are prohibited by Business and Professions  
 18 Code section 17200 *et seq.* Defendant engaged in a pattern of "unfair" business practices that  
 19 violate the wording and intent of the statutes, by engaging in practices that threatens an incipient  
 20 violation of law, or violates the policy or spirit of laws because its effects are comparable to or  
 21 the same as a violation of the law by manufacturing, distributing, and marketing products with a  
 22 false country of origin designation and violating Section 17533.7 by falsely claiming that the  
 23 products referenced herein are "Made in U.S.A." when they actually contain component parts  
 24 manufactured outside of the United States.

25       a. Alternatively, Defendant engaged in a pattern of "unfair" business practices  
 26 that violate the wording and intent of the statutes, by engaging in practices  
 27 that are immoral, unethical, oppressive or unscrupulous, the utility (if any) of  
 28



1 which conduct is far outweighed by the harm done to consumers and public  
2 policy by manufacturing, distributing, marketing, and advertising products  
3 with the false claim that the products referenced herein are "Made in U.S.A."

4 b. Alternatively, Defendant engaged in a pattern of "unfair" business practices  
5 that violate the wording and intent of the statutes, by engaging in practices  
6 wherein: (1) the injury to the consumer was substantial; (2) the injury was not  
7 outweighed by any countervailing benefits to consumers or competition; and  
8 (3) the injury was of the kind that the consumers themselves could not  
9 reasonably have avoid by manufacturing, distributing, marketing, and  
10 advertising products with the false claim that the products referenced herein  
11 are "Made in U.S.A."

12 41. Beginning at an exact date unknown as yet and continuing up through the present,  
13 Defendant committed acts of unfair competition, including those described above, prohibited by  
14 Business and Professions Code section 17200 *et seq.* by engaging in a pattern of "fraudulent"  
15 business practices within the meaning of Business & Professions Code section 17200 *et seq.*, by  
16 manufacturing, distributing, marketing products with a false country of origin designation and  
17 violating Section 17533.7 by falsely claiming that the products referenced herein are "MADE IN  
18 USA."

19 42. Defendant engaged in these unlawful, unfair and fraudulent business practices for  
20 the primary purpose of collecting unlawful and unauthorized monies from Plaintiff and all others  
21 similarly situated; thereby unjustly enriching Defendants.

22 43. As a result of the repeated violations described herein, Defendant received and  
23 continues to receive unearned commercial benefits at the expense of their competitors and the  
24 public.

25 44. Defendant's unlawful, unfair and fraudulent business practices presents a  
26 continuing threat to the public in that Defendant continues to engage in illegal conduct.

27 45. Such acts and omissions are unlawful and/or unfair and/or fraudulent and  
28



1 constitute a violation of Business & Professions Code section 17200 *et seq.* Plaintiff reserves the  
 2 right to identify additional violations by Defendant as may be established through discovery.

3 46. As a direct and legal result of their unlawful, unfair and fraudulent conduct  
 4 described herein, Defendant has been and will be unjustly enriched by the receipt of ill-gotten  
 5 gains from customers, including Plaintiff, who unwittingly provided their money to Defendant  
 6 based on Defendant's fraudulent country of origin designation. The proper measure of the ill-  
 7 gotten gains is set forth in the analysis contained in the seminal case of *Colgan v. Leatherman*  
 8 *Tool Group, Inc.* (2006) Cal.App.4<sup>th</sup> 663 and is not determined by simply claiming that  
 9 Defendant's overall "revenues" and/or "gross profits" exceeds \$5 million dollars as it pertains to  
 10 the disposable lighters that are at issue in this litigation.

11 47. Plaintiff and Class Members suffered an "actual injury" because Plaintiff and  
 12 Class Members' money was taken by Defendant as a result of Defendant's false "MADE IN  
 13 USA" claims set forth on the BIC disposable lighters.

14 48. In prosecuting this action for the enforcement of important rights affecting the  
 15 public interest, Plaintiff seeks the recovery of attorneys' fees under Code of Civil Procedure  
 16 section 1021.5, which is available to a prevailing plaintiff who wins relief for the general public.

### 17 THIRD CAUSE OF ACTION

18 (Violation of Business & Professions Code § 17533.7 As Against All Defendants)

19 49. Plaintiff realleges and incorporates by reference Paragraphs 1 through 48,  
 20 inclusive, as if set forth in full herein.

21 50. Business & Professions Code Section 17533.7 provides:

22 It is unlawful for any person, firm, corporation or  
 23 association to sell or offer for sale in this State any  
 24 merchandise on which merchandise or on its container  
 25 there appears the words "Made in U.S.A." "Made in  
 26 America," "U.S.A.," or similar words when the  
 27 merchandise or *any article, unit, or part thereof*, has  
 28 been entirely or substantially made, manufactured, or  
 produced outside of the United States. (emphasis  
 added).

51. Defendant violated Business & Professions Code Section 17533.7 by selling and offering to sell merchandise in the State of California with the "MADE IN USA" label as fully set forth herein. The merchandise at issue in this case actually contains component parts that are manufactured outside of the United States.

52. It is alleged on information and belief that Defendant's violations of Business & Professions Code Section 17533.7 was done with awareness of the fact that the conduct alleged was wrongful and were motivated solely for increased profit. It is also alleged on information and belief that Defendant did these acts knowing the harm that would result to Plaintiff and that Defendant did these acts notwithstanding that knowledge.

53. As a direct and proximate result of Defendant's violations of Business & Professions Code Section 17533.7, Plaintiff and Class members are entitled to restitution of excess monies paid to Defendant by Plaintiff and Class members relating to the false "MADE IN USA" claims on Defendant's disposable lighter products. The proper measure of damages in this regard is set forth in the analysis contained in *Leatherman* and is not determined by simply claiming that Defendant's overall "revenues" and/or "gross profits" exceeds \$5 million dollars as it pertains to the disposable lighters that are at issue in this litigation.

54. Plaintiff and Class Members suffered an “actual injury” because Plaintiff and Class Members’ money was taken by Defendant as a result of Defendant’s false “MADE IN USA” claims set forth on the BIC disposable lighters.

55. In prosecuting this action for the enforcement of important rights affecting the public interest, plaintiff seeks to recover attorneys' fees under Section 1021.5 of the Code of Civil Procedure, which is available to a prevailing plaintiff who wins relief for the general public.

WHEREFORE, Plaintiff prays for relief and judgment against Defendants, as follows:

## PRA YER

1. Damages according to proof as to the third cause of action (See *Colgan v. Leatherman Tool Group, Inc.*, Cal.App.4<sup>th</sup> 663,696 (2<sup>nd</sup> Dist. 2006));

2. For a judgment declaring this action to be a proper class action;

3. Declaring that Defendant violated the provisions of California Business & Professions Code §§ 17200 et seq.;

4. Pursuant to California Business & Professions Code Section 17204, Civil Code Section 1780, and pursuant to the equitable powers of this Court, enjoining Defendant, their subsidiaries, affiliates, and their successors, agents, servants, officer, directors, employees, and all persons, acting in concert with them, directly or indirectly, from engaging in conduct violative of California law as fully detailed herein;

5. Pursuant to Business & Professions Code Section 17204, requiring Defendant to provide restitution to compensate, and to restore all persons in interest, including all Class Members, with all ill-gotten monies acquired by means of Defendant's unfair competition, which is measured by the analysis contained in the seminal case of *Colgan v. Leatherman Tool Group, Inc.* (2006) Cal.App.4<sup>th</sup> 663;

6. A declaration that Defendant violated Business & Professions Code § 17533.7;

7. Plaintiff's reasonable attorneys' fees as it relates to all three causes of action (pursuant to Civil Code § 1780 as it relates to the first cause of action and pursuant to Code of Civil Procedure § 1021.5 as it relates to the second and third causes of action);

8. For costs of suit incurred herein; and

9. For such other and further relief as this Court finds just, equitable and proper, including, but not limited to, the remedy of disgorgement.

Dated: November 13, 2007

Respectfully submitted,

DEL MAR LAW GROUP, LLP

by

JOHN H. DONBOLI  
JL SEAN SLATTERY

Attorneys for Plaintiff DONNA R. NELSON, an individual and on behalf of all others similarly situated

**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

**# 145664 - BH**

**December 18, 2007  
12:38:16**

**Civ Fil Non-Pris**

USAO #: 07CV2367 CIVIL FILING

Judge.: IRMA E GONZALEZ

Amount.: \$350.00 CK

Check#: BC# 65278

**Total-> \$350.00**

FROM: CIVIL FILING  
NELSON V. BIC USA

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

DONNA R. NELSON

**DEFENDANTS**

BIC USA, INC., Does 1-100

07 CV 2367 TEG BLM  
FILED(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant San Diego  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED. U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

(c) Attorney's (Firm Name, Address, and Telephone Number)

John H. Donboli / JL Sean Slattery  
Del Mar Law Group, LLP  
322 Eighth Street, Suite 101  
Del Mar, CA 92014  
(859) 793-6244Attorneys (If Known)  
Kevin W. Alexander / Benjamin T. Morton / Craig J. Mariam  
Gordon & Rees LLP  
101 West Broadway, Suite 1600  
San Diego, CA 92101  
(619) 696-6700

DEPUTY

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |   |                                |   |                                |                                       |
|---|---|--------------------------------|---|--------------------------------|---------------------------------------|
| Citizen of This State                   | PTF <input checked="" type="checkbox"/> 1 | DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | PTF <input type="checkbox"/> 4 | DEF <input type="checkbox"/> 4        |
| Citizen of Another State                | <input type="checkbox"/> 2                | <input type="checkbox"/> 2     | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5     | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3                | <input type="checkbox"/> 3     | Foreign Nation  | <input type="checkbox"/> 6     | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES								
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<table border="0"> <tr> <th>PERSONAL INJURY</th> <th>PERSONAL INJURY</th> </tr> <tr> <td> <input type="checkbox"/> 310 Airplane  <input type="checkbox"/> 315 Airplane Product Liability  <input type="checkbox"/> 320 Assault, Libel &amp; Slander  <input type="checkbox"/> 330 Federal Employers' Liability  <input type="checkbox"/> 340 Marine  <input type="checkbox"/> 345 Marine Product Liability  <input type="checkbox"/> 350 Motor Vehicle  <input type="checkbox"/> 355 Motor Vehicle Product Liability  <input type="checkbox"/> 360 Other Personal Injury               </td> <td> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice  <input type="checkbox"/> 365 Personal Injury—Product Liability  <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  </td> </tr> <tr> <th colspan="2">PERSONAL PROPERTY</th> </tr> <tr> <td> <input type="checkbox"/> 370 Other Fraud  <input type="checkbox"/> 371 Truth in Lending  <input type="checkbox"/> 380 Other Personal Property Damage  <input type="checkbox"/> 385 Property Damage Product Liability               </td> <td></td> </tr> </table>	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability 	PERSONAL PROPERTY		<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
PERSONAL INJURY	PERSONAL INJURY											
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REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	PROPERTY RIGHTS								
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark								
				SOCIAL SECURITY								
				<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))								
				FEDERAL TAX SUITS								
				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609								

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Defendants removal of action under 28 U.S.C. 1441, 1446, 1453 (Plaintiff's action described below)

Brief description of cause:

Class Action alleging violations of CA Civ. Code sect. 1750 et seq., CA Bus. &amp; Prof. Code sect. 17200 et seq.

**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

December 5, 2007

SIGNATURE OF ATTORNEY OF RECORD

(Craig J. Mariam)

FOR OFFICE USE ONLY

RECEIPT # 145664

AMOUNT \$350

12/18/07 BM

APPLYING IFP

JUDGE

MAG. JUDGE